

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

GREG IRVING,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:05CV2089 JCH
)	
VAN WAGNER, M.D.,)	
HEART OF AMERICA BARIATRICS,)	
FRANS S. HANDOYO, M.D., and)	
TENET, ST. ALEXIUS HOSPITAL,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's Motion for Remand, filed March 28, 2006. (Doc. No. 37).

This case arises out of the death of Plaintiff's wife while under the care of Defendants. Plaintiff filed his initial complaint in this matter in the Circuit Court of the City of St. Louis on August 27, 2005. (Notice of Removal, Doc. No. 1). Defendants removed to this court on November 8, 2005 on the basis of diversity of citizenship. Id. Plaintiff filed his Motion for Remand on March 28, 2006. (Doc. No. 37).

Plaintiff asserts that the case must be remanded because all of the Defendants are citizens of Missouri, making removal improper under the forum defendant rule. 28 U.S.C. § 1441(b) provides that an action not founded on a federal question "shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is

brought.” A recent Eighth Circuit case clarifies that violation of the forum defendant rule is a jurisdictional defect, and thus may be asserted anytime before final judgment is entered. Horton v. Conklin, 431 F.3d 602, 605 (8th Cir. 2005); 28 U.S.C. § 1447 (“A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal”).

As all four Defendants are citizens of Missouri, the state in which the action was brought, this Court does not have jurisdiction, and the case is remanded to the Circuit Court of the City of St. Louis.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff’s Motion for Remand (Doc. No. 37) is **GRANTED** and this case is remanded to the Circuit Court of the City of St. Louis, State of Missouri. An appropriate Order of Remand will accompany this Order.

Dated this 25th day of July, 2006.

/s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE